

REMARKS

Claims 6-7 and 12 are pending in the present application.

At the outset, Applicants wish to thank Examiner Aughenbaugh for the helpful and courteous discussion with their undersigned Representative on July 28, 2003. During the discussion various amendments and the art of record were discussed. The content of this discussion is believed to be accurately reflected in the amendments and comments set forth herein. Applicants also wish to thank Examiner Aughenbaugh for indicating the withdrawal of the objections and rejections set forth in the Office Action dated August 14, 2002.

The rejections of Claims 4-7 and 12 under 35 U.S.C. §103(a) over:

- (a) Fox in view of Clausen et al and further in view of Applicants' alleged admission;
  - (b) Levy et al in view of Clausen et al and further in view of Applicants' alleged admission;
  - (c) Buechler in view of Clausen et al and further in view of Applicants' alleged admission; and
  - (d) Oberhardt in view of Clausen et al and further in view of Applicants' alleged admission,
- are obviated by the present amendment.

Applicants submit that the art of record does not disclose or suggest a container for an immunoassay that is coated with an ultra-hydrophilic polymer which is a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, as presently claimed (see Claim 12). Specifically, Applicants submit that the art of record fails to disclose a copolymer containing a (2-methacryloyloxyethylphosphorylcholine) polymer subunit, much

less a a container for an immunoassay, wherein the inner surface, which is to contact a specimen for immunoassay, of the container is formed from or coated with the this copolymer and wherein the saturation adsorption amount, on the inner surface of the container, of molecules used for the assay is  $1 \times 10^{-1}$  pmol/cm<sup>2</sup> or less.

Citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), MPEP §2143.03 states: "To establish a prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." Applicants submit that the disclosure of the art of record, in any combination, fail to meet this requirement and, as such, the artisan would have no reasonable motivation to produce a container for an immunoassay as presently claimed or any reasonable expectation of the advantageous obtained thereby.

Applicants respectfully request withdrawal of these grounds of rejection.

The rejections of Claims 4, 5, 7, and 12 under 35 U.S.C. § 112, second paragraph, is obviated in part by amendment and traversed in part.

Claims 4 and 5 have been cancelled and, therefore, this ground of rejection over these claims is now moot. Claim 12 has also been amended to clearly define the surface of the container to be coated with the copolymer, as well as the relationship of the same to the specimen to be contacted.

Applicants maintain that that the saturation adsorption amount is, in fact, a function of the container and are defined by the ultra-hydrophilic polymer selected for coating the container. Applicants refer the Examiner to page 7, line 18 to page 8, line 26 of the specification, which clearly provides guidance for the selection of the criteria alluded to by the Examiner (i.e., The identities of the molecules used (including size), the temperature, concentration of the solution, and the pH of the solvent). Further, page 7, line 18 to page 13,

line 1, provide a detailed description, which clearly underscores that role played by the claimed ultra-hydrophilic polymers. Moreover, Applicants refer the Examiner to the Examples (pages 13-23), which provide the artisan with a detailed roadmap of experiments that can be used to assess whether the claimed saturation adsorption threshold has been met.

Applicants remind the Examiner that definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made (MPEP §2173.02).

In view of the foregoing, Applicants believe that the language of the claims are such that a person of ordinary skill in the art could interpret the metes and bound of the claims so as to understand how to avoid infringement (MPEP §2173.02), especially when interpreted with the specification as a guide.

Moreover, Applicants note that this rejection appears to be because the Examiner merely wants the Applicant to improve the clarity or precision of the language used. However, since the skilled artisan can readily appreciate the meaning of the claims, Applicants submit that further amendments are unnecessary. Therefore, Applicants request withdrawal of the claim objections pursuant to MPEP §2173.02 as the claims are definite within the context of 35 U.S.C. §112, second paragraph.

For the foregoing reasons, Applicants submit that the present invention is definite as defined in 35 U.S.C. §112, second paragraph. Withdrawal of this ground of rejection is requested.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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